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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 **SHIKEB SADDOZAI,**

14 Plaintiff,

15 **v.**

16 **RON DAVIS, et al.,**

17 Defendants.
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Case No. 5:18-cv-05558-BLF (PR)

**NOTICE OF NON-OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

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1 **TO THE COURT AND PLAINTIFF SHIKEB SADDOZAI, PRO SE:**

2 **PLEASE TAKE NOTICE** that Plaintiff's opposition to Defendant's motion to dismiss
 3 was due April 10, 2020. (ECF No. 32.) Plaintiff requested an unlimited extension of time so that
 4 he could conduct discovery (ECF No. 33), and Defendant opposed because discovery is not
 5 appropriate at this litigation stage (ECF No. 34). The Court has not granted Plaintiff an
 6 extension, defense counsel received no opposition, and the Court's docket reflects no opposition
 7 filed.

8 Defendant request the Court grant his motion because his right to a dismissal is plain.
 9 Plaintiff's third amended complaint makes unequivocally clear that he failed to exhaust his
 10 administrative remedies before filing suit. (ECF No. 29.) He explicitly pleads that he exhausted
 11 after suit was filed. (Compare ECF No. 29 at 2 with ECF No. 1.) In doing so, he failed to satisfy
 12 exhaustion requirements as mandated by the Ninth Circuit. *McKinney v. Carey*, 311 F.3d 1198,
 13 1199 (9th Cir. 2002). The Ninth Circuit requires this action be dismissed without prejudice. *Id.*
 14 ("Congress has made a policy judgment that [the expenditure of additional resources by the
 15 parties and the court in requiring a second suit be filed] is outweighed by the advantages of
 16 requiring exhaustion prior to the filing of suit.").

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 18 Dated: April 13, 2020

Respectfully submitted,

19 XAVIER BECERRA
 20 Attorney General of California
 21 WILLIAM C. KWONG
 Supervising Deputy Attorney General

/s/ Allison M. Low

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 23 ALLISON M. LOW
 Deputy Attorney General
 24 *Attorneys for Defendant*

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CERTIFICATE OF SERVICE

Case Name: S. Saddozai v. Davis, et al.

Case No. 5:18-cv-05558-BLF (PR)

I hereby certify that on April 13, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

NOTICE OF NON-OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On April 13, 2020, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Shikeb Saddozai (AY1590)
California State Prison - Corcoran
P.O. Box 3461
Corcoran, CA 93212
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 13, 2020, at San Francisco, California.

G. Pang
Declarant

/s/ G. Pang
Signature